

SENATE BILL No. 224

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Various utility matters. Amends the definition of "clean coal technology" in various statutes. Defines the term as a technology used at an electric generating facility to reduce airborne emissions that are regulated, or reasonably anticipated to be regulated, by the federal government, the state, or a political subdivision of the state. (The current definition includes only technologies that reduce sulfur or nitrogen emissions.) Allows an existing electric generating facility to petition the utility regulatory commission (IURC) for approval of a regulated air emissions project. Requires the IURC to: (1) approve the project if the IURC finds, after notice and hearing, the project to be reasonable and necessary; and (2) provide certain financial incentives for the project. Allows the IURC to provide certain additional incentives for an approved project. Provides financial incentives for an electric utility's: (1) investments in advanced metering infrastructure (AMI); and (2) implementation of conservation and load management programs. Requires the IURC to: (1) create specified financial incentives for investments in AMI and in conservation and load management programs; and (2) review applications by electric utilities for those incentives.

Effective: Upon passage; July 1, 2008.

Hershman

January 8, 2008, read first time and referred to Committee on Utilities & Regulatory Affairs.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 224

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) As used in
3 this section, "clean coal technology" means a technology (including
4 precombustion treatment of coal):

5 (1) that is used at a new or existing electric generating facility and
6 directly or indirectly reduces airborne emissions of ~~sulfur or~~
7 ~~nitrogen based~~ pollutants **that are:**

8 (A) associated with the combustion or use of coal; and

9 (B) **regulated, or reasonably anticipated to be regulated,**
10 **by:**

11 (i) **the federal government;**

12 (ii) **the state;**

13 (iii) **a political subdivision of the state; or**

14 (iv) **any agency of a unit of government described in**
15 **items (i) through (iii); and**

16 (2) that either:

17 (A) is not in general commercial use at the same or greater

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scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

SECTION 2. IC 8-1-2-6.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with **the** combustion or use of coal; and

(B) **regulated, or reasonably anticipated to be regulated,** by:

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

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(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tippie.

"Qualified pollution control property" means an air pollution control device on a coal burning electric generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin.

"Utility" refers to any electric generating utility allowed by law to earn a return on its investment.

(b) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction, but only if at the time of the application and thereafter:

(1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or

(2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some non-Indiana coal.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 8-1-2-6.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

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(A) associated with the combustion or use of coal; and
 (B) **regulated, or reasonably anticipated to be regulated,**
 by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in
 items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater
 scale in new or existing facilities in the United States as of
 January 1, 1989; or

(B) has been selected by the United States Department of
 Energy for funding under its Innovative Clean Coal
 Technology program and is finally approved for such funding
 on or after January 1, 1989.

(b) The commission shall allow a public or municipally owned
 electric utility that incorporates clean coal technology to depreciate that
 technology over a period of not less than ten (10) years or the useful
 economic life of the technology, whichever is less and not more than
 twenty (20) years if it finds that the facility where the clean coal
 technology is employed:

(1) utilizes and will continue to utilize (as its primary fuel source)
 Indiana coal; or

(2) is justified, because of economic considerations or
 governmental requirements, in utilizing non-Indiana coal;
 after the technology is in place.

SECTION 4. IC 8-1-2-6.8 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This
 section applies to a utility that begins construction of qualified
 pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a
 technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and
 directly or indirectly reduces airborne emissions ~~of sulfur,~~
~~mercury, or nitrogen oxides or other regulated air emissions that~~
 are:

(A) associated with the combustion or use of coal; and

(B) **regulated, or reasonably anticipated to be regulated,**
 by:

(i) the federal government;

(ii) the state;

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(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.

(d) As used in this section, "utility" refers to any energy generating utility allowed by law to earn a return on its investment.

(e) Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction.

(f) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 5. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 8.4. Advanced Metering Infrastructure and Conservation and Load Management Programs for Electric Utilities

Sec. 1. (a) The general assembly makes the following findings:

(1) Growth of Indiana's population and economic base has created a need for additional sources of reliable electric energy in Indiana.

(2) In addition to the construction of new energy generating facilities, the development and implementation of cost effective conservation and load management programs are needed if Indiana is to continue to provide reliable electric utility service at reasonable prices.

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(3) Technological advances, such as advanced metering infrastructure, make the deployment of conservation and load management programs increasingly more cost effective and economically feasible.

(4) Investments in advanced metering infrastructure will:

(A) improve the reliability of electric utilities' distribution systems; and

(B) provide increased capacity to meet Indiana's growing demand for electricity.

(5) Economic barriers exist to the increased development and implementation of conservation and load management programs by electric utilities.

(6) The Energy Policy Act of 2005 (Public Law 109-58, 119 Stat. 594) requires state regulatory authorities to consider and determine whether it is appropriate to implement:

(A) time based rate schedules for certain electric utilities; and

(B) the advanced metering and communications technology needed to support time based rate schedules.

(7) It is in the public interest for the state to encourage the increased development and implementation of cost effective conservation and load management programs by:

(A) removing economic barriers to the development and implementation of conservation and load management programs; and

(B) providing financial incentives to electric utilities to develop and implement conservation and load management programs.

(b) The purpose of this chapter is to:

(1) enhance:

(A) the security and reliability of Indiana's electric distribution systems; and

(B) the competitiveness of Indiana's economy; and

(2) complement the state's efforts to encourage the construction of new energy generating facilities;

through the promotion and increased use of cost effective conservation and load management programs.

Sec. 2. (a) As used in this chapter, "advanced metering infrastructure" or "AMI" means communications systems needed to support advanced metering functions for an electric utility's distribution system, including the following advanced functions:

(1) Demand response and load control.

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(2) Automatic meter reading.

(3) The connection and disconnection of a customer's premises to the grid.

(4) The reporting of outages and the identification of outage locations.

(b) The term includes:

(1) equipment installed on a customer's premises, including the meter itself;

(2) all central office applications; and

(3) communications equipment between the customer's meter and the central office applications;

necessary to support the advanced metering functions.

Sec. 3. (a) As used in this chapter, "AMI costs" means the capital, operating, and maintenance costs incurred by an electric utility in developing and implementing AMI for its electric distribution system.

(b) The term includes the following costs associated with an electric utility's AMI:

(1) Research and development costs.

(2) Administrative costs.

(3) Labor costs, including costs for services of contractors and subcontractors.

(4) Equipment and depreciation costs.

(5) Tax costs.

(6) Financing costs.

(7) Financial incentives offered by the electric utility in connection with its AMI investment.

Sec. 4. (a) As used in this chapter, "conservation and load management costs" means the capital, operating, and maintenance costs incurred by an electric utility in developing and implementing a conservation and load management program.

(b) The term includes the following costs associated with an electric utility's conservation and load management program:

(1) Research and development costs.

(2) Administrative costs.

(3) Labor costs, including costs for services of contractors and subcontractors.

(4) Equipment and depreciation costs.

(5) Tax costs.

(6) Financing costs.

(7) Financial incentives paid to participating customers.

(8) Marketing and advertising costs.

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(9) Monitoring and evaluation costs.

(10) Financial incentives offered by the electric utility for:

(A) investment in; or

(B) performance associated with;

its conservation and load management program.

Sec. 5. As used in this chapter, "conservation and load management program" means a program that:

(1) is sponsored by an electric utility;

(2) is designed to:

(A) reduce the amount of electricity consumed by the electric utility's customers; or

(B) influence customers' timing or use of electricity to reduce the demand placed on the electric utility's distribution system; and

(3) employs any of the following to achieve the reduction or change in customers' electricity use described in subdivision (2):

(A) End use devices or other equipment.

(B) Special rates or rate structures.

(C) Customer incentives.

(D) Customer education initiatives.

(E) Other technologies or services.

Sec. 6. (a) As used in this chapter, "electric utility" means a utility:

(1) that generates or distributes electricity; and

(2) whose rates and charges are regulated by the commission.

(b) The term includes the following:

(1) A rural electric membership corporation organized under IC 8-1-13.

(2) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 7. As used in this chapter, "lost revenues" refers to revenues lost by an electric utility as a result of not generating electricity because of the implementation of a conservation and load management program. In determining the revenues lost as a result of a conservation and load management program, an electric utility shall subtract the value of any reduced operating or maintenance costs resulting from the program, including fuel cost savings.

Sec. 8. As used in this chapter, "performance based shared savings incentive" means an incentive mechanism designed to

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1 allocate the net system benefits of an electric utility's conservation
2 and load management programs between:

- 3 (1) the electric utility's shareholders; and
4 (2) the electric utility's retail customers.

5 Sec. 9. (a) The commission shall encourage electric utilities to
6 invest in AMI by creating the following financial incentives for
7 investments in AMI, if the investments are found by the
8 commission to be reasonable and necessary:

- 9 (1) The timely recovery of AMI costs over a reasonable
10 amortization period, as determined by the commission.
11 (2) The timely recovery of costs for equipment rendered
12 obsolete by an electric utility's implementation of AMI, based
13 on the remaining depreciable life of the obsolete equipment.
14 (3) The authorization of a timely return equal to the electric
15 utility's weighted cost of capital (as determined under 170
16 IAC 4-6-14) with respect to the electric utility's capital
17 investment in AMI.
18 (4) Other financial incentives the commission considers
19 appropriate.

20 (b) An electric utility that seeks one (1) or more of the incentives
21 described in subsection (a) must file, on a form approved by the
22 commission, an application with the commission for approval of
23 the incentives sought.

24 (c) The commission shall, after notice and hearing, issue a
25 determination on the eligibility of the electric utility's AMI
26 investment for the financial incentives described in subsection (a)
27 not later than one hundred twenty (120) days after the date of the
28 electric utility's application under subsection (b).

29 Sec. 10. (a) The commission shall encourage electric utilities to
30 implement conservation and load management programs by
31 creating the following incentives for the implementation of
32 conservation and load management programs, if the programs are
33 found by the commission to be reasonable and necessary:

- 34 (1) The timely recovery of conservation and load management
35 costs over a reasonable amortization period, as determined by
36 the commission.
37 (2) The timely recovery of lost revenues, or the authorization
38 of other mechanisms to remove lost revenues as a barrier to
39 the implementation of conservation and load management
40 programs.
41 (3) The authorization of a return to the electric utility in the
42 form of:

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(A) a timely return equal to the electric utility's weighted cost of capital (as determined under 170 IAC 4-6-14) with respect to the electric utility's total unrecovered capital investment in conservation and load management programs; or

(B) a performance based shared savings incentive.

(4) Other financial incentives the commission considers appropriate.

(b) An electric utility that seeks one (1) or more of the incentives described in subsection (a) must file, on a form approved by the commission, an application with the commission for approval of the incentives sought.

(c) The commission shall, after notice and hearing, issue a determination on the eligibility of the electric utility's conservation and load management program for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the electric utility's application under subsection (b).

SECTION 6. IC 8-1-8.7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of ~~sulfur or nitrogen based~~ pollutants **that are:**

(A) associated with the combustion or use of coal; and

(B) **regulated, or reasonably anticipated to be regulated,** by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

SECTION 7. IC 8-1-8.7-3 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (c), a public utility may not use clean coal technology at a new or existing electric generating facility without first applying for and obtaining from the commission a certificate that states that public convenience and necessity will be served by the use of clean coal technology.

(b) The commission shall issue a certificate of public convenience and necessity under subsection (a) if the commission finds that a clean coal technology project offers substantial potential of reducing ~~sulfur or nitrogen based~~ pollutants **described in section 1(1) of this chapter** in a more efficient manner than conventional technologies in general use as of January 1, 1989. For purposes of this chapter, a project that the United States Department of Energy has selected for funding under its Innovative Clean Coal Technology program and is finally approved for funding after December 31, 1988, is not considered a conventional technology in general use as of January 1, 1989. When determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.

(2) Whether a clean coal technology project will also extend the useful life of an existing electric generating facility and the value of that extension.

(3) The potential reduction of ~~sulfur and nitrogen based~~ pollutants **described in section 1(1) of this chapter that can be** achieved by the proposed clean coal technology system.

(4) The reduction of ~~sulfur nitrogen based~~ pollutants **described in section 1(1) of this chapter** that can be achieved by conventional pollution control equipment.

(5) Federal ~~sulfur and nitrogen based~~ pollutant emission standards.

(6) The likelihood of success of the proposed project.

(7) The cost and feasibility of the retirement of an existing electric generating facility.

(8) The dispatching priority for the facility utilizing clean coal technology, considering direct fuel costs, revenues and expenses of the utility, and environmental factors associated with byproducts resulting from the utilization of the clean coal technology.

(9) Any other factors the commission considers relevant, including whether the construction, implementation, and use of

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clean coal technology is in the public's interest.

(c) A public utility is not required to obtain a certificate under this chapter for a clean coal technology project that constitutes a research and development project that may be expensed under IC 8-1-2-6.1.

SECTION 8. IC 8-1-8.8-3, AS AMENDED BY P.L.175-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy production or generating facility and directly or indirectly reduces or avoids airborne emissions of sulfur, mercury, or nitrogen oxides or other ~~regulated~~ air emissions **that are:**

(A) associated with the combustion or use of coal; and

(B) **regulated, or reasonably anticipated to be regulated,** by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding or loan guaranty under an Innovative Clean Coal Technology or loan guaranty program under the Energy Policy Act of 2005, or any successor program, and is finally approved for such funding or loan guaranty on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

SECTION 9. IC 8-1-8.8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.3. As used in this chapter, "existing electric generating facility" refers to a facility in Indiana, other than a new energy generating facility, that, regardless of its fuel source, is used to generate electricity.**

SECTION 10. IC 8-1-8.8-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.5. (a) As used in this**

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1 section, "regulated air emissions" means air emissions from an
 2 electric generating facility that are regulated, or reasonably
 3 anticipated to be regulated, by:

- 4 (1) the federal government;
- 5 (2) the state;
- 6 (3) a political subdivision of the state; or
- 7 (4) any agency of a unit of government described in
 8 subdivisions (1) through (3).

9 (b) As used in this section, "regulated air emissions project"
 10 means a project designed to reduce regulated air emissions from an
 11 existing electric generating facility. The term includes projects that
 12 provide offset programs, such as agricultural and forestry
 13 activities, that reduce the level of greenhouse gases in the
 14 atmosphere.

15 (c) An energy utility (as defined in IC 8-1-2.5-2) may petition the
 16 commission for approval of the construction, installation, and
 17 operation of a regulated air emissions project. If the commission
 18 finds, after notice and hearing, the proposed regulated air
 19 emissions project to be reasonable and necessary, the commission
 20 shall approve the project and provide the following incentives:

- 21 (1) The timely recovery of costs associated with the regulated
 22 air emissions project, including capital, operation,
 23 maintenance, depreciation, tax, and financing costs incurred
 24 during the construction and operation of the project.

- 25 (2) The recovery of costs associated with:

- 26 (A) the purchase of emissions allowances; or
- 27 (B) the payment of emission taxes;
 28 arising from compliance with air emissions regulations.

29 (d) In addition to the incentives described in subsection (c), the
 30 commission may provide any of the following incentives for an
 31 approved regulated air emissions project:

- 32 (1) The authorization of up to three (3) percentage points on
 33 the return on shareholder equity that would otherwise be
 34 allowed to be earned on the project.
- 35 (2) Other financial incentives the commission considers
 36 appropriate.

37 SECTION 11. An emergency is declared for this act.

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